

FILED
DEC 19 2008
By **PATRICK E. DUFFY, CLERK**
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES,)	CR 08-10-M-DWM
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
JAY FRANSEN, JAY LOVELL SHUMWAY,)	
LARRY THERON HUTCHINGS, and)	
ROGER KEITH HUTCHINGS,)	
)	
Defendants.)	

Based on testimony presented at trial, the Court referred this matter to United States Magistrate Judge Jeremiah C. Lynch to determine whether Defendants Jay Frandsen, Larry Hutchings, and Roger Hutchings should be held responsible for all or part of the compensation of their Court-appointed Counsel pursuant to 18 U.S.C. § 3006A(f). Judge Lynch entered Findings and Recommendation on December 12, 2008. The Court will review his Findings and Recommendation for clear error. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake

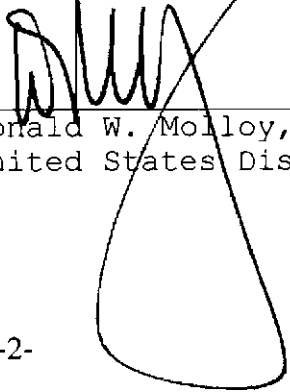
has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Based on the evidence presented by each defendant, Judge Lynch found that all three lack the present financial ability to reimburse attorneys' fees expended on their behalf in this matter. See 18 U.S.C. § 3006A(c), (f); U.S. v. Lorenzini, 71 F.3d 1489, 1494 (9th Cir. 1995). Judge Lynch reviewed Individual Income Tax Returns and other financial documents for all three parties, and he heard testimony regarding their respective financial conditions. This evidence demonstrated that none of the defendants has the present ability to reimburse his attorneys' fees.

After a review of Judge Lynch's Findings and Recommendations, I find no clear error and thus adopt the Findings and Recommendation in full.

Accordingly, IT IS HEREBY ORDERED that Judge Lynch's Findings and Recommendation (dkt #102) are adopted in full. Jay Frandsen, Larry Hutchings, and Roger Hutchings are not required to reimburse attorneys' fees under 18 U.S.C. § 3006A.

Dated this 19th day of December, 2008.



Donald W. Molloy, District Judge
United States District Court